

GOLFING ON GREEN ACRES: IS THE ACQUISITION OF GOLF COURSES AN APPROPRIATE MEANS OF PRESERVING OPEN SPACE IN NEW JERSEY?

Shannon Carroll

TABLE OF CONTENTS

I. INTRODUCTION.....	212
II. HISTORY AND STRUCTURE OF THE PROGRAM.....	213
III. GREEN ACRES' FUNDING SOURCE: GARDEN STATE PRESERVATION TRUST	214
A. History: Creation of GSPT and How It Works	214
B. Finances: How the Trust is Funded and Allocation of the Money	215
C. Green Acres' Funding: Allocation within the Program.....	216
D. How Green Acres Funds Have Been Utilized	217
IV. GREEN ACRES' CURRENT FUNDING DILEMMA.....	218
V. IMPORTANCE OF OPEN SPACE FOR CONSERVATION AND RECREATION.....	220
A. Benefits of Conservation	220
B. Benefits of Recreation Space	221
VI. SIMILAR LEGISLATION	221
VII. THE GREEN ACRES LEGISLATION.....	223
VIII. GOLF COURSES CREATE ENVIRONMENTAL CONCERNS.....	224
IX. THE ENVIRONMENTALISTS' UNUSUAL ALLY: BUILDERS.....	225
X. GOLFERS' DEFENSE: WHY COURSE ACQUISITION MAY BE AN APPROPRIATE USE OF FUNDING.....	226
XI. ORGANIC GOLF COURSES MAY PROVIDE AN ECO- FRIENDLY ALTERNATIVE TO GOLF COURSE MANAGEMENT.....	228
XII. ENVIRONMENTAL PARTNERSHIP PROGRAMS: AUDUBON COOPERATIVE SANCTUARY PROGRAM AND WILDLIFE LINKS PROGRAM.....	230

XIII. MEMBERS ONLY? WHY GOLF COURSES MAY BE TOO EXCLUSIVE FOR PUBLIC FUNDING.	231
XIV. CURRENT ACTION IN NEW JERSEY	234
XV. SUITABILITY OF GOLF COURSES AS GREEN ACRES PROJECTS	234
XVI. FINAL THOUGHTS	237

I. Introduction

The New Jersey Green Acres Land Acquisition Act (“Green Acres”) is a successful, necessary, and appropriate means of preserving land for open space and recreational purposes.¹ There are, however, some funding concerns within the currently implemented program that must be addressed.

This Note tracks the history of the Green Acres program as well as the Garden State Preservation Trust (“GSPT” or “the Trust”), the funding authority for the program. An understanding of how the GSPT operates is necessary to appreciate the present state of program funding. Currently, GSPT’s funds are dwindling, which highlights the need for strong project selections fitting within the aims of the GSPT and, more narrowly, those of the Green Acres program. The GSPT is operating with limited funds that are projected to run out within the next two years. The funding section of this Note examines the current funding situation and explores a number of ways to preserve those funds.

After providing the background of Green Acres and the GSPT, this Note considers the importance of the program’s twin aims—conservation of land for both open space and recreation. The benefits of open space and recreation land are discussed individually and the program’s success in fulfilling these twin aims is analyzed. The Note then briefly compares Green Acres to similar legislation in other states.

Specifically, this Note focuses on the use of Green Acres funding to acquire golf courses within the state of New Jersey; such acquisitions fall under both program aims. The suitability of funding for golf courses is examined through the perspectives of environmentalists, developers, and golfers. In addition, this Note explores the potential for organic golf courses and other

¹ New Jersey Green Acres Land Acquisition Act of 1961, N.J. STAT. ANN. §§ 13:8A-1 to -56 (West 2003 & Supp. 2008).

environmentally friendly plans for golf. By way of comparison, the actions of other states with regard to golf courses and open space are also considered.

This Note concludes by projecting realistic goals for the future and by suggesting how to ensure that both aims of the program are properly represented. In short, course funding through Green Acres should not be *per se* forbidden, because golf courses provide aesthetic, recreational, and even some environmental and economic benefits. Despite these benefits, golf courses serve a narrow public function and create numerous environmental hazards. Therefore, the use of public, open-space funds for their acquisition should be quite limited.

II. *History and Structure of the Program*

Green Acres' mission is "to achieve, in partnership with others, a system of interconnected open spaces, whose protection will preserve and enhance New Jersey's natural environment and its historic, scenic, and recreational resources for public use and enjoyment."² In interpreting the act, a New Jersey appellate court found that "Green Acres was enacted to provide lands for public recreation, the conservation of natural resources and to promote public health and welfare in light of the needs of an expanding population."³

"The Green Acres Program was created in 1961 to meet New Jersey's growing *recreation and conservation needs*."⁴ Since its inception, the program has protected over 600,000 acres of open space and has funded hundreds of park development projects.⁵ As of May 2006, the Green Acres program had already "preserved or

² N.J. DEP'T OF ENVTL. PROT., GREEN ACRES PROGRAM, GRANTS AND LOANS TO LOCAL GOVERNMENTS AND NONPROFIT ORGANIZATION FOR OPEN SPACE ACQUISITION AND PARK DEVELOPMENT 1 (2006).

³ *In re* Amendment to Recreation & Open Space Inventory of Plainfield, 353 N.J. Super. 310, 328 (N.J. Super. Ct. App. Div. 2002) (citing N.J. STAT. ANN. § 13:8A-36).

⁴ N.J. Dep't of Env'tl. Prot., Green Acres Program, <http://www.state.nj.us/dep/greenacres> (last visited Oct. 26, 2006) (emphasis added).

⁵ N.J. DEP'T OF ENVTL. PROT., *supra* note 2.

assisted in the preservation of 4,540 acres of open space” for that year.⁶

The Program has enjoyed much success, especially in the past ten years, due to the approval of a stable source of funding. Since 1961, New Jersey voters have supported the program’s mission by approving ten bond issues for land preservation,⁷ the most recent being the Garden State Preservation Trust.⁸

III. Green Acres’ Funding Source: Garden State Preservation Trust

A. History: Creation of GSPT and How It Works

The Garden State Preservation Trust (“GSPT”) is the funding authority for the Green Acres Program. In the November 1998 election, New Jersey voters approved a referendum which provides a stable source of funding⁹ “to conserve forests, watersheds and wildlife habitats, to develop parks with outdoor recreational facilities, and to preserve working farms, agricultural landscapes and historic structures.”¹⁰ The Garden State Preservation Trust Fund was established through a constitutional amendment,¹¹ enacted through the Garden State Preservation Trust Act,¹² and signed into law on June 30, 1999.¹³

The GSPT is not authorized to actually acquire or hold open space; that authority lies with the Green Acres Program.¹⁴ The

⁶ Press Release, N.J. Dep’t of Env’t. Prot., DEP Preserves 186 Acre Golf Course in Monmouth County (Oct. 8, 2006), *available at* http://www.state.nj.us/dep/newsrel/2006/06_0039.htm.

⁷ SAMUEL M. HAMILL, JR. & CHRIS STURM, NEW JERSEY FUTURE, SMART CONSERVATION: THE “GREEN” SIDE OF SMART GROWTH (2003), *available at* <http://www.njfuture.org/Media/Docs/08-26-03.pdf>.

⁸ Garden State Preservation Trust Act, N.J. STAT. ANN. §§ 13:8C-1 to -42 (West 2003 & Supp. 2008); *see also* Garden State Preservation Trust, <http://www.state.nj.us/gspt> (last visited Apr. 5, 2007).

⁹ Green Acres Program, *supra* note 4.

¹⁰ N.J. PRES. TRUST, ANNUAL REPORT FISCAL YEAR 2004, at 6 (2004), *available at* http://www.state.nj.us/gspt/pdf/fy2004_annuaL_report.pdf.

¹¹ N.J. CONST. art. VIII, § II, para. 7.

¹² N.J. STAT. ANN. § 13:8C-4.

¹³ Green Acres Program, *supra* note 4.

¹⁴ N.J. STAT. ANN. § 13:8C-5; *see also* Green Acres Program, State Park & Open Space Acquisition, <http://www.state.nj.us/dep/greenacres/state.htm> (last visited May 4, 2008).

GSPT¹⁵ must report to the Governor and Legislature annually, “setting forth its complete operating and financial statement for the previous year, a five-year financing plan, and a short-range financing plan for the coming year.”¹⁶ The Trust may not add projects to the list submitted by Green Acres; it may, however, delete projects.¹⁷

B. Finances: How the Trust is Funded and Allocation of the Money

The Trust is primarily funded through tax revenues, and supplemented with capital from bonds and other sources. The GSPT receives \$98 million a year in sales tax revenues to be allocated “for the preservation of parks, natural lands, farmland and historic sites.”¹⁸ In addition, there is \$1 billion in bond authorization as well as another \$150 million approved by voters.¹⁹

The GSPT funds are divided among three main preservation programs—Green Acres, Farmland Preservation, and Historic Preservation. Of the \$98 million in tax funding, \$6 million is dedicated to Historic Preservation.²⁰ The remaining \$92 million plus bond proceeds are divided between the Green Acres and Farmland Preservation programs; 60 percent goes to the Green Acres Program.²¹ In total, the typical annual appropriation for land acquisition is \$200 million with \$120 million dedicated to Green Acres.²²

Limited funds are appropriated to GSPT, Green Acres in part; these monies do not support the program’s needs. Due to the scarcity of funding, the tax revenue funding will soon only

¹⁵ Nine voting members constitute the Trust, “including the Commissioner of Environmental Protection, the Secretary of Agriculture, the Secretary of State and the State Treasurer, [. . .] and five public members, one of whom shall be appointed by the Governor.” N.J. STAT. ANN. § 13:8C-4(b).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ GARDEN STATE PRESERVATION TRUST, PRESERVATION FUNDING FORUM PRESENTATION 2-3 (July 17, 2006), <http://www.state.nj.us/gspt/pdf/FINAL.Preservation.Funding.Forum.Presentation.invertedcolors.pdf>.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Id.* at 6.

cover the programs' debt repayments. After 2009, the \$98 million in sales tax revenues is to go only to debt service.²³

C. Green Acres' Funding: Allocation within the Program

The funds allocated to Green Acres are further divided between the state and local governments, and nonprofit groups. The state receives 50 percent of Green Acres' funding for state land acquisition projects, with 20 percent of the state monies earmarked for urban counties.²⁴ Local acquisition and development projects receive 40 percent of the funds.²⁵ The remaining 10 percent "shall be allocated for providing grants to assist qualifying tax exempt nonprofit organizations to acquire and develop lands."²⁶ The funds are appropriated through four acquisition programs.²⁷ All local and non-profit programs have project caps,²⁸ and every project must fit within the programs' aims—supporting recreation or conservation.²⁹

The first program, the Standard Acquisition Program provides counties and municipalities with up to 25 percent of the cost of qualified projects with a low-interest loan for part or all of the project balance depending on funding availability.³⁰ The second and most generous program, the Planning Incentive Acquisition Program ("PI"), offers a 50 percent matching grant and has a higher project cap.³¹ To qualify for a PI loan, the municipality must have an approved Open Space and Recreation Plan ("OSRP").³² The third program, the Nonprofit Acquisition and Development Program, offers 50 percent matching funds to

²³ *Id.* at 3.

²⁴ HAMILL & STURM, *supra* note 7, at 13 n.20.

²⁵ *Id.*

²⁶ JAMES P. RHATICAN, CONNELL FOLEY LLP, IT'S NOT EASY STAYING GREEN: A SUMMARY OF THE GARDEN STATE PRESERVATION TRUST ACT (1999), <http://www.connellfoley.com/articles/rhatican.html>.

²⁷ HAMILL & STURM, *supra* note 7, at 13–14.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 13.

³¹ *Id.*

³² *Id.*; see also, ASS'N OF N.J. ENVTL. COMM'NS ("ANJEC"), OPEN SPACE PLAN (2000), available at <http://www.anjec.org/pdfs/OpenSpacePlan.pdf> (explaining the benefits and elements of an open space plan).

qualifying organizations for eligible projects.³³ The fourth method is the state program for direct acquisitions of land to be used for “state parks, forests, watershed protection, natural areas and wildlife management areas.”³⁴ This method, through which 50 percent of the Green Acres’ funds are allocated, is described as one in which “the Green Acres program serves as ‘the real estate agent’ for the DEP.”³⁵

D. How Green Acres Funds Have Been Utilized

Since July 1999, the Green Acres Program preserved 134,099 acres of land.³⁶ The Program funded 211 local government and 21 non-profit park improvement projects.³⁷ As of July 2006, the Green Acres Program appropriated \$1,034,100,000.³⁸ Pending Green Acres’ appropriations and approvals total \$153,000,000 (\$80,000,000 for state acquisitions and \$73,000,000 for local and nonprofit assistance projects).³⁹

The Trust anticipates that there is \$50,000,000 remaining in state acquisition funds and \$0 left for local and nonprofit assistance.⁴⁰ The local and nonprofit assistance funding is gone and the state acquisition funds are almost completely drained. The scarcity of funds that the Green Acres Program faces makes its choices more difficult and more vital than ever.

E. Rate of Funding Approvals—Success of the Trust

Most applications for Green Acres funding are denied. Of all the Green Acres funding requests made, only 18 percent receive approval.⁴¹ From FY2000 to FY2006, local government requests reached \$489 million; \$90.4 million was approved (18.5 percent).⁴²

³³ HAMILL & STURM, *supra* note 7, at 14.

³⁴ *Id.*

³⁵ *Id.*

³⁶ GARDEN STATE PRESERVATION TRUST, *supra* note 18, at 30.

³⁷ *Id.* at 32.

³⁸ *Id.* at 33.

³⁹ *Id.* The local and nonprofit assistance funds include sources in addition to the Garden State Preservation Trust fund. *Id.*

⁴⁰ *Id.* at 33.

⁴¹ Angela Delli Santi, *With Open Space Fund Nearly Empty, Talk Turns to Reauthorization*, PHILLYBURBS.COM, July 17, 2006, <http://www.phillyburbs.com/pb-dyn/news/23-10262006-732598.html>.

⁴² GARDEN STATE PRESERVATION TRUST, *supra* note 18, at 34.

For nonprofits, the requested funds totaled \$93.9 million; \$16.5 million was approved (17.6 percent).⁴³ Although it is the second-best-funded state program in the nation,⁴⁴ the Green Acres' funding fails to reach about 82 percent of the requested projects.

The GSPT states that its funds are being used to "preserve acreage at a rate *three times faster* than land is being lost to development."⁴⁵ The Program is a success and has been considered by other states throughout the nation in developing their own programs.⁴⁶ For continued success, the Program's stated goals must be evaluated in terms of the state's citizens' needs and wants.

IV. Green Acres' Current Funding Dilemma

The current funding for the GSPT is not sufficient to meet New Jersey's "needs and expectations . . . for water supply, biodiversity, recreational open space, or sustainable communities."⁴⁷ As funds dwindle, the state is looking for solutions to fix the current state of Green Acres' financial stress.

A new system for investing the funds should yield more money for the program.⁴⁸ Before leaving office, Governor Richard Codey signed a law to increase the yields on the GSPT's bonds.⁴⁹ The bonds were previously held in low yield accounts while waiting to be appropriated for specific projects.⁵⁰ Now, the law allows some of the funds to be placed in federally guaranteed income investment packages.⁵¹ Ralph Siegel, Executive Director of GSPT, states that under the new plan "[the Trust] can earn a great

⁴³ *Id.*

⁴⁴ Delli Santi, *supra* note 41. Florida has the most-funded state program. *Id.*

⁴⁵ GARDEN STATE PRESERVATION TRUST, MISSION, http://www.state.nj.us/gspt/pdf/gspt_handout.pdf.

⁴⁶ JOHN HELLAND, MINN. H.R. RESEARCH DEP'T, NATURAL RESOURCES TRUST FUNDS AND THEIR CITIZEN COMMUNITIES (2002), *available at* <http://www.house.leg.state.mn.us/hrd/pubs/nrcomm.pdf> (Information brief outlining state programs, which have strong committees that play a part in natural resource funding decisions).

⁴⁷ HAMILL & STURM, *supra* note 7, at 4.

⁴⁸ Press Release, Michelle S. Byers, New Jersey Conservation Foundation, NJ Voters to See Better Yields on Open Space Investment (Feb. 2, 2006), <http://www.njconservation.org/html/swi/02-02-06.htm>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

deal more interest . . . and keep the funds 100-percent safe.”⁵² Siegel predicts “this law will allow [the Trust] to capture an additional \$20–30 million more in interest earnings.”⁵³ The new, income-bearing system appears to get more out of the state’s “green” dollars.

Despite this advancement, the open space fund is nearly empty and could run out completely in 2007—two years ahead of schedule.⁵⁴ According to Siegel, as it currently stands:

[The Trust has] lots of money to close deals already in progress; that money is in place. But the bond money approved by the voters will all be committed in a few years, depending on the level of funding requests by the various agencies doing preservation work. At that point, [the Trust] will have to go back to the voters.⁵⁵

In 2007, a statewide ballot question to reauthorize the fund. The specifics of the funding proposal, however, are unsettled, such as “the amount of allocation, the funding source and the timing.”⁵⁶

To address the GSPT’s current problems, Governor Corzine held a “Preservation Funding Forum” at the Rutgers EcoComplex in Burlington County.⁵⁷ The forum featured a presentation on the GSPT, illustrating the money spent and projects completed to date in addition to a summary of the current funding situation.⁵⁸ There were also individual breakout sessions for each program, including Green Acres.⁵⁹ Although the forum itself is a step in the right direction, it does not appear that any substantial inroads were made toward the ultimate goal of the Program.

Without further funding reform, Green Acres will not be able to meet its aims. The Green Acres Program seeks to preserve open space for conservation and recreation purposes.⁶⁰ The twin aims of

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Delli Santi, *supra* note 41; see also Alex Nussbaum, *Open Space Funds Drying Up*, THE RECORD, Feb. 20, 2006, at A1; Press Release, Byers, *supra* note 48.

⁵⁵ Press Release, Byers, *supra* note 48.

⁵⁶ Delli Santi, *supra* note 41.

⁵⁷ See generally GARDEN STATE PRESERVATION TRUST, *supra* note 18.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ N.J. STAT. ANN. § 13:8A-2 (West 2003).

the Program target two different purposes of preservation, which each have important objectives.

V. Importance of Open Space for Conservation and Recreation

Green Acres funding was instated to effectuate the twin goals of conserving open space and providing land for recreational purposes.⁶¹ Both goals of the program are important as each provides public benefits.

A. Benefits of Conservation

The conservation of open space provides natural and economic benefits to the citizens of New Jersey. Open space provides habitats for wildlife, absorbs rainfall, and provides areas for recreation. In addition, studies show that open space provides different non-market benefits for different people. Two main ways people derive these benefits are through the usefulness⁶² of the space and the passive satisfaction of “knowing that open space exists.”⁶³

Preserving open space provides economic benefits for state residents. The Trust for Public Land recently identified a series of economic benefits of open space.⁶⁴ First, open space preservation contributes to smart growth, which saves money wasted on unplanned development.⁶⁵ Second, parks and open space attract

⁶¹ *See id.*

⁶² The use value comes from “seeing or using the open space, such as having a pleasant view, experiencing improved water quality, or having increased opportunity for viewing wildlife.” VIRGINIA MCCONNELL & MARGARET WELLS, RESOURCES FOR THE FUTURE, THE VALUE OF OPEN SPACE: EVIDENCE FROM STUDIES OF NONMARKET BENEFITS 5 (2005), available at <http://www.rff.org/Documents/RFF-REPORT-Open%20Spaces.pdf>.

⁶³ *Id.* at 29–30. The passive use comes from the “utility, or satisfaction, [people get] from knowing that farms on the periphery of an urban area exist as they have for generations, even if they never plan to visit those areas.” *Id.* at 5.

⁶⁴ The Trust for Public Land (“TPL”) is an organization dedicated to “conserving land for people.” The Trust for Public Land Home Page, <http://www.tpl.org> (last visited Sept. 29, 2007). *See also* THE TRUST FOR PUBLIC LAND, THE ECONOMIC BENEFITS OF PARKS AND OPEN SPACE: HOW LAND CONSERVATION HELPS COMMUNITIES GROW SMART AND PROTECT THE BOTTOM LINE (1999) [hereinafter TPL, ECONOMIC BENEFITS], available at http://www.tpl.org/tier3_cdl.cfm?content_item_id=1145&folder_id=727.

⁶⁵ TPL, ECONOMIC BENEFITS, *supra* note 64, at 4–10.

tax-paying businesses and residents to the area.⁶⁶ Third, urban parks and recreational areas stimulate urban revitalization.⁶⁷ Fourth, open space provides income through tourism and outdoor recreation.⁶⁸ Lastly, open space preservation is the most cost effective means of providing clean water, fresh air, and other environmental needs.⁶⁹

B. Benefits of Recreation Space

The benefits of recreation space include aesthetics, but also center around health benefits, both mental and physical, that are derived from activity in the space. Recreation space enables physical activity, and all the benefits derived therefrom.⁷⁰ Physical activity reduces the risk of developing heart disease, high blood pressure, Type II diabetes, colon cancer, and having a stroke.⁷¹ In addition, regular activity helps people achieve and maintain a healthy body weight, and also builds and maintains healthy bones, muscles and joints.⁷²

Physical activity promotes mental health benefits as well. For example, regular activity “reduces feelings of depression and anxiety.”⁷³ Furthermore, exercise “promotes psychological well-being and reduces feelings of stress.”⁷⁴

VI. Similar Legislation

Similar legislation in other states helps demonstrate areas in which the Green Acres Program is flourishing, while also highlighting potential room for improvement. For money spent

⁶⁶ *Id.* at 11–15.

⁶⁷ *Id.* at 16–21.

⁶⁸ *Id.* at 22–27.

⁶⁹ *Id.* at 39–43.

⁷⁰ See Ctr. for Disease Control, Physical Activity for Everyone, <http://www.cdc.gov/nccdphp/dnpa/physical/importance/why.htm> (last visited May 4, 2008).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *id.*

on preserving open space, New Jersey's program is "second only to Florida's in terms of dollars spent."⁷⁵

Alabama's Forever Wild Trust Fund was created by a constitutional amendment "[i]n order to protect the natural heritage and diversity of Alabama for future generations, the state . . . will acquire lands . . . to ensure their protection and use for conservational, educational, recreational or aesthetic purposes."⁷⁶ The goals of Alabama's plan leave the funding open for any land acquisition related to both true land conservation and simple aesthetic conservation.⁷⁷ By including aesthetic purposes as its own category, the Alabama plan allows for funding of land that may appear environmentally sound, but, while aesthetically pleasing is actually a pollutant, like golf courses.⁷⁸

In Colorado, an amendment to the state constitution⁷⁹ "dedicates a portion of state lottery proceeds to projects that *preserve, protect, and enhance Colorado's wildlife, parks, rivers, trails, and open spaces*. Since it began awarding grants in 1994, [the Great Outdoors of Colorado Program has] awarded almost \$549.8 million for 2,700 projects throughout the state."⁸⁰ The Colorado amendment, like New Jersey's Green Acres Program, provides for open space as well as recreational space funding. The Colorado Division of Wildlife and State Parks divides its funding grants into three main categories.⁸¹ First, land, water, and wildlife protection receives 71.5 percent of the funding.⁸² Second, the outdoor recreation facilities program receives 23 percent of the funds to be used to create new facilities for parks and trail development. The

⁷⁵ Delli Santi, *supra* note 41.

⁷⁶ ALA. CONST. amend. 543, §3(b).

⁷⁷ *Id.*

⁷⁸ See discussion *infra* Part VIII.

⁷⁹ COLO. CONST. art. XXVII, amend. 8.

⁸⁰ Great Outdoors of Colorado Program, What is GOCO?, <http://www.goco.org/About/WhatIsGOCO/tabid/114/Default.aspx> (last visited May 4, 2008) (emphasis added).

⁸¹ HELLAND, *supra* note 46, at 4.

⁸² See *id.* The land, water and wildlife category is further divided according to five initiatives: "[1] protecting important river corridors, [2] protecting Colorado's [n]atural areas and wildlife habitats, [3] protecting community separators, [4] protecting land for future parks and recreation, [and] [5] protecting strategic agricultural lands."

final 5.5 percent is dedicated to youth environmental education and interpretation.⁸³

Preservation is a growing goal for many states. However, some programs have been more successful than others. In Alabama, the legislation distributes the monies for a broad category of purposes. Conversely, Colorado, has wisely divided the allocation of monies into three narrow categories. By dividing the funds, Colorado has ensured that each of the programs will receive funding and that no single aim will be sacrificed to support another. New Jersey's program seems to have some enviable aspects, but it could still learn from the choices of Colorado.

VII. The Green Acres Legislation

The statute lays out guidelines for how the Program's funding should be implemented. In particular, less developed land and land suitable for multiple purposes should be favored. The Green Acres Act provides that the funds are to be used "to acquire lands for recreation and conservation purposes"⁸⁴

The Act sets out a series of considerations for choosing land projects. In acquiring the land, consideration is to be given to a balanced distribution of recreation and conservation facilities throughout the state.⁸⁵ In addition, when practical, acquisitions should be limited "to predominantly open and natural land to minimize the cost of acquisition and the subsequent expense necessary to render the land suitable for recreation and conservation purposes."⁸⁶ Whenever possible, land chosen for acquisition should be "suitable for multiple recreation and conservation purposes."⁸⁷ Finally, the Program's choices should coordinate with the plans of the other branches of state government.⁸⁸

Facially, golf courses do not seem to be a perfect fit with the Program's aims. Golf courses are not less-developed land, nor are they capable of multiple purposes. Furthermore, golf courses raise

⁸³ *See id.*

⁸⁴ N.J. STAT. ANN. § 13:8A-4 (West 2003).

⁸⁵ § 13:8A-5(a).

⁸⁶ § 13:8A-5(b).

⁸⁷ § 13:8A-5(c).

⁸⁸ § 13:8A-5(d).

serious environmental concerns, which is peculiar for a program designed with conservation in mind.⁸⁹

VIII. Golf Courses Create Environmental Concerns

When it comes to the environment, golf courses create a toxic playground. Golf courses generate environmental concerns centering around the “impacts of turfgrass maintenance, wildlife and wetlands conservation, [. . .] golf course wastewater reuse[,]”⁹⁰ and golf course construction and associated development.⁹¹ Environmentalists criticize the state owning golf courses due to the effects on the water supply and the detrimental effects of pesticides and fertilizers on the local eco-system.⁹² Seventeen-thousand of the nation’s “golf courses use more toxic fungicides per acre than almost anyplace else, including farms.”⁹³

In his article on golf and the environment, David B. Dornak discusses the impact of golf courses:

Because over 1.5 million acres of land are consumed by golf courses, the golf industry, the public, courts, legislatures and regulatory agencies must all be concerned about the impact of golf courses on the environment. Golf courses require large tracts of land and are often constructed in previously untouched rural areas, wetlands, or other environments that can be ecologically vulnerable. Wildlife and aquatic ecosystems can be adversely affected by the high quality playing surfaces, which require fertilizers, fungicides, herbicides and insecticides.⁹⁴

⁸⁹ See *infra* Part VIII.

⁹⁰ David B. Dornak, *A New Generation is Teeing Off: Is Tiger Woods Making Divots on Environmentally Sound Golf Courses?*, 23 COLUM. J. ENVTL. L. 299, 304 (1998).

⁹¹ James T. Snow, *The USGA's Environmental Strategies: What We've Got and What We Need*, USGA GREEN SECTION RECORD, May-June 1995, at 3-6, available at http://www.usga.org/turf/articles/environment/research/usga_environmental_strategies.html.

⁹² See Barbara Williams, *State Buys 392 Acres for \$1.7M; Redevelopment Zone Will Stay Green*, HERALD NEWS, Jan. 10, 2006, at B03; Richard Cohen, *W. Milford Backs Open-Space Plan; 466 Acres Would Be Sold to State or Preserved*, THE RECORD, Jan. 17, 2003, at L01; see also Jan Hefler, *Open Space Program Spars for the Courses*, PHILA. INQUIRER, May 24, 2006, at B01.

⁹³ Jane Kay, *ENVIRONMENT IN FOCUS: Pesticide Reduction S.F. Gets Organic With Its Truly 'Green' Golf Course Laws Trim Exposure to Toxic Chemicals*, S.F. CHRON., May 30, 2005, at A1.

⁹⁴ Dornak, *supra* note 90, at 300.

Golf courses require significant resources to maintain a fresh, natural look. "As carefully cultivated carpets, courses require a massive amount of energy and resources to be maintained in a perpetual state of newness—indeed, golf space seems to transform everything around it into a desert."⁹⁵ The negative externalities that golf courses create raise questions about whether a state open space fund should be acquiring and maintaining them especially in light of the current funding issues.

IX. The Environmentalists' Unusual Ally: Builders

Within the State, builders criticize the use of open space funding for golf courses.⁹⁶ Prominent builders have commented on and emphasized the purposes of the Green Acres Act in support of their opposition to the acquisition of golf courses. In addition, builders have highlighted harms created by using the funding for golf course acquisition—namely, environmental and housing concerns.⁹⁷

Patrick O'Keefe, head of the New Jersey Builders Association, commented that the Green Acres program was intended to "lead to the acquisition of space based on environmental sensitivity, agricultural productivity, or the expansion of greenways for things like hiking paths."⁹⁸ The builders have found that funding the acquisition of golf courses is not only a poor choice for the environment, but also a poor choice for working-class families that need adequate housing, which could be provided on the land being preserved.⁹⁹

The builders' response is both surprising and sensible. Rarely does one find builders and environmentalists fighting the same battle over open space funding allocation. The builders' commentary should be considered in light of the fact that when the state acquires golf courses, it keeps the builders from further developing the land. Clearly, it is in the builders' economic

⁹⁵ R.E. Somol, *Join the Club: Golf Space: The New Town Square Has 18 Holes*, WIRED, June 11 2003, http://www.wired.com/wired/archive/11.06/golf_spc_pr.html.

⁹⁶ See Jerry Zgoda, *Small Golf Courses Squeezed Off the Map*, STAR TRIBUNE (Minneapolis, Minn.), Aug. 13, 2006, at 1A.

⁹⁷ Hefler, *supra* note 92.

⁹⁸ *Id.*

⁹⁹ *Id.*

interest to keep the state out of the bidding war for failing golf course land. The builders are correct in asserting that a golf course is not the environmental oasis that is contemplated by the Act.

X. *Golfers' Defense: Why Course Acquisition May Be an Appropriate Use of Funding*

Despite the protests of environmentalists and builders, golf enthusiasts maintain that golf courses benefit the public and environment, and as a result are worthy of state Green Acres funding after all. The benefits of golf courses include recreational space, aesthetically pleasing greens, as well as some less obvious advantages.

Golf courses provide some environmental benefits. Golf courses may supply natural safe havens for wildlife and fauna. In his article on golf courses and the environment, David Dornak found that "golf courses do not have to threaten wildlife, and potentially can have a positive effect by providing an environmental sanctuary for wildlife or by adding a natural setting to urban areas."¹⁰⁰ United States Golf Association ("USGA") studies¹⁰¹ have revealed a series of natural and economic benefits derived from golf courses.¹⁰²

The studies found at least ten main benefits to be derived from the golf course ecosystem.¹⁰³ First, golf course roughs and trees provide a habitat for wildlife.¹⁰⁴ Second, the course turfs protect topsoil from water and wind erosion.¹⁰⁵ Third, courses improve community aesthetics through beauty and function by reducing negative externalities like noise pollution.¹⁰⁶ Fourth, the

¹⁰⁰ Dornak, *supra* note 90, at 300.

¹⁰¹ Between the years 1983 and 1994, the USGA spent over \$11 million funding over 90 research projects at land-use universities on the relationship between golf and the environment. Snow, *supra* note 91.

¹⁰² USGA Turf Mgmt., *Golf Courses Benefit People and Wildlife*, http://www.usga.org/turf/articles/environment/general/golf_courses_benefit.html (last visited April 5, 2008).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

turf absorbs and filters rainwater.¹⁰⁷ Fifth, playing golf improves health and reduces stress.¹⁰⁸ Sixth, the trees on golf courses improve air quality.¹⁰⁹ Seventh, the turf helps capture and cleanse dirty runoff in urban areas.¹¹⁰ Eighth, well maintained turf reduces airborne allergens and discourages pests, such as ticks and mosquitoes.¹¹¹ Ninth, turf can help restore lost and damaged land areas, including former landfill or mining sites.¹¹² Tenth, golf courses make substantial contributions to the community's economy.¹¹³

Golf communities have been seen as a means of moving people inward, as a type of "manifest destiny in reverse."¹¹⁴ Golf communities developed around 18-hole courses "transform exterior space into a form of interior by mobilizing the landscape not merely as a natural resource for health and adventure, but as an acquired sign of value and security."¹¹⁵ The golf community design forces people inward, relying on a central focus—the golf course. This creates a sense of community,¹¹⁶ with the golf course acting as a type of recreational town square.

Green Acres administrators have determined that golf courses fit within the aims of the Program, and measures may be taken to limit their negative externalities. The Green Acres director supports the use of state funding for golf courses as the program was designed to preserve a diversity of open space, "includ[ing] natural habitats, farms and greenways for public recreation."¹¹⁷ Golf courses fit squarely within the aim of providing for public recreation. Additionally, the director asserted that the state would

¹⁰⁷ This does not take into account the chemical runoff from fertilizers and pesticides used in golf course maintenance. See *supra* Part VIII (discussing environmental concerns created by golf courses).

¹⁰⁸ USGA Turf Mgmt., *supra* note 102.

¹⁰⁹ *Id.* In terms of open space funding, most projects would seem to include forestry, and so would likely provide similar benefits.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Somol, *supra* note 95.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Hefler, *supra* note 92.

utilize “recycled water and pesticide-management practices to protect the grounds from pollution.”¹¹⁸

In addition to the environmental benefits golf courses provide, there are also clear recreational benefits to be derived from the space. A golf course provides for recreation by enabling residents to get out and take part in the sport. The aim of providing recreation space is important and worthy of consideration in determining whether a golf course is an appropriate state investment.

Even if golf space fits within the aims of Green Acres, other factors should still be taken into consideration. Keeping conservation in mind, golf courses supported through the use of open space funding should remain as environmentally sound as possible. A new movement supporting organic golf courses provides some promising ideas for course management.

XI. Organic Golf Courses May Provide an Eco-Friendly Alternative to Golf Course Management

A middle ground between the arguments of environmentalists and golfers may be the use of an organic golf course. An organic golf course solves the problems associated with pesticides and fertilizers while providing the golfers with their fairways and greens. The need for a more environmental solution to the game has, in recent years, created an organic golf movement.

Some basic features of an organic golf course include the recycling of rain and irrigation water as well as the use of organic fertilizers.¹¹⁹ States have also begun to require the use of more environmentally friendly course maintenance practices.¹²⁰

San Francisco is an example of one city taking action in the battle for “green” golf. A San Francisco law requires golf courses to be truly “green.”¹²¹ A city ordinance bans the use of most toxic fungicides, herbicides, insecticides and rodenticides, forcing its

¹¹⁸ *Id.*

¹¹⁹ Vivian S. Toy, *Supporters Try to Save 1919 Manor*, N.Y. TIMES, Jul. 20, 2003, at L13.

¹²⁰ See Kay, *supra* note 93; see also Long Island Pine Barrens Soc’y, *infra* note 129.

¹²¹ Kay, *supra* note 93.

golf courses to find more organic maintenance options.¹²² The city golf courses have employed creative methods to maintain their greens without the chemicals.¹²³ For instance, “the greens keepers protect soils with microbe inoculants that knock out yellow-spotting fungus, hand-pluck English daises, daub a bit of herbicide on plantain weeds and flush out moles with the hose.”¹²⁴ The maintenance actions of San Francisco greens keepers indicate that, with some additional effort, golfers can have their links without destroying the local ecology.

Greens keepers of Harding Park golf course in San Francisco, used by the PGA for national tour events, have managed to maintain a “high-end” standard of turf while abiding by the city ordinance.¹²⁵ James Snow, a green golf authority¹²⁶ questions whether the Midwest and extremely hot Southern states would be able to achieve similar success: “If you don’t use pesticides, you’d play on dirt or you’d play on weeds. And nobody would want to do that.”¹²⁷ Snow further stated, “Let’s face it. Golf is a \$62 billion industry. Golfers establish what they want for the golf course. Who’s going to go to a resort club when the grass is dead?”¹²⁸ Snow’s comments may be realistic for the goals of private courses, but publicly funded courses should be sacrificing the emerald green fairways for a truly “green” environment. As San Francisco has demonstrated, courses utilizing fewer chemicals can successfully maintain high-quality playing fields.

A New York appellate division decision requires review of environmental impacts before the development of golf courses.¹²⁹

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ James Snow is the National Director of the Green Section Department of the U.S.G.A. U.S.G.A. Green Section, <http://www.usga.org/green> (last visited May 4, 2008). The Green Section is “the nation’s chief authority regarding impartial, authoritative information for turfgrass management.” *Id.* The Green Section also funds research on “developing improved strains of turfgrass that require less water, fewer pesticides, . . . and the promotion of environmentally-sensitive construction and maintenance practices.” *Id.*

¹²⁷ Kay, *supra* note 93.

¹²⁸ *Id.*

¹²⁹ Long Island Pine Barrens Soc’y, Inc. v. Town Bd., 290 A.D.2d 448 (N.Y. App. Div. 2002); A. Overbeck, *Organic Golf Activists Score Major Victory*, GOLF COURSE NEWS

A four judge panel unanimously “ordered the Town of Stony Point to comply with SEQRA (State Environmental Quality Review Act) by completing a full environmental impact statement (EIS) before continuing work on its . . . golf course.”¹³⁰ The director of a local group battling to make all golf courses organic cited this as a major victory, stating, “It helps to establish a precedent to make developers at least study the use of organics during the EIS process. This is the first case that has gone to the appellate level that addresses pesticide use and the construction of golf courses.”¹³¹ The action taken by the New York appellate court indicates that an environmental consciousness can force a change in the way people think about golf and create its courses.

If New Jersey has decided to use Green Acres funds to acquire and maintain golf courses, the state should require stringent organic golf course standards. The courses could be marketed as a “green” course, perhaps with less-than-regal fairways that support rather than destroy the natural setting.

Even with an organic playing field, golf courses may not be an appropriate state purchase. To create a golf course (even an organic one), the landscape must be seriously altered—trees cut and cart paths built. Even nature-friendly golf courses are no longer undeveloped land and are not nearly as natural as a trail or other potential Green Acres projects.

XII. Environmental Partnership Programs: Audubon Cooperative Sanctuary Program and Wildlife Links Program

Environmental and golf organizations have combined forces to create golf courses that are more eco-friendly. In 1990, the Audubon Society of New York¹³² and the United States Golf Association (“USGA”)¹³³ began to work together to develop more environmentally friendly golf courses.¹³⁴ In 1995, this developed

(Apr. 2002), available at http://findarticles.com/p/articles/mi_qa4031/is_200204/ai_n9074165.

¹³⁰ Overbeck, *supra* note 129.

¹³¹ *Id.*

¹³² See New York Audubon Home Page, <http://www.nyaudubon.org> (last visited Apr. 11, 2007) (a local branch of the national Audubon Society).

¹³³ See United States Golf Association Home Page, <http://www.usga.org> (last visited Apr. 11, 2007) (the USGA is the governing body of golf in the United States).

¹³⁴ Dornak, *supra* note 90, at 307.

into a national program entitled the Audubon Cooperative Sanctuary Program ("ACSP"), which works "to create and enhance wildlife habitat[s] and conserve natural resources on golf courses."¹³⁵ The program works individually with developers and course associations. Golf courses may receive certifications of recognition from the program in each of the following categories: 1) Environmental Planning, 2) Public/Member Involvement, 3) Wildlife and Habitat Management, 4) Integrated Pest Management, 5) Water Conservation, and 6) Water Quality Management.¹³⁶ Although the Audubon Society is not generally supportive of golf space, it works to minimize the negative externalities of the courses.

Another environmental program, Wildlife Links, is carried out as a cooperative effort between the USGA and the National Fish and Wildlife Foundation ("NFWF").¹³⁷ Annually, the USGA contributes \$100,000 to the Wildlife Links program, an environmental research program focused on wildlife.¹³⁸ The NFWF "help[s] establish objectives and identify worthwhile research projects concerning wildlife and golf courses."¹³⁹

The USGA makes clear its commitment to the environment through its research programs and the State should demonstrate at least an equal commitment. If the State chooses to allocate its funds to golf courses, compliance with the Audubon Cooperative Sanctuary Program certificate requirements should be a necessary part of the acquisition and maintenance of those courses.

XIII. Members Only? Why Golf Courses May Be Too Exclusive for Public Funding.

An environmentally conscious course is a step in the right direction, but is not a quick fix for all the problems the acquisition of golf courses creates. Golf courses have a select audience that enjoys both the benefits of recreation and the aesthetic appeal of golf courses. Another factor is that the game of golf (even when

¹³⁵ *Id.*

¹³⁶ *Id.* at 308.

¹³⁷ *Id.* The Fish and Wildlife Foundation aims to organize and fund conservation projects that benefit wildlife and the environment. *Id.*

¹³⁸ Snow, *supra* note 91.

¹³⁹ *Id.*

publicly subsidized) is expensive. Most citizens cannot afford the golf clubs, balls, greens fees, and mandatory dress code the game requires.

The use of state funds for a traditionally exclusive sport is questionable. The funding becomes more peculiar when the courses remain out of reach for most citizens even after the state has allocated funds to the course. In particular, the recent funding provided to Cream Ridge Golf Club of Upper Freehold, New Jersey¹⁴⁰ seems to be a dubious choice.

A brief history of the Cream Ridge Golf Club helps one understand the situation. In 1958, the Miscoski family built a nine-hole golf course, which they expanded to eighteen holes in 1963.¹⁴¹ The golf course has become a local landmark as it "provides a focal point in the otherwise rural area."¹⁴² In recent years, the private golf course struggled to stay afloat.¹⁴³ The Miscoski family considered selling the land to a developer.¹⁴⁴

The State and Township recently purchased the Cream Ridge Golf Club and adjacent land from the family for \$14 million.¹⁴⁵ The State contributed \$10.5 million¹⁴⁶ and now owns the golf course.¹⁴⁷ The Township contributed \$3 million¹⁴⁸ and owns the surrounding farmland.¹⁴⁹

The State currently leases the golf course property to the previous owner for up to five years.¹⁵⁰ Cream Ridge, the leaseholder, is to pay the taxes on the property for the duration of the lease.¹⁵¹

¹⁴⁰ Joseph Sapia, *State, Town to Pay \$14M For Golf Course*, ASBURY PARK PRESS, May 26, 2006.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Press Release, N.J. Dep't of Envtl Prot., *supra* note 6.

¹⁴⁷ Sapia, *supra* note 140.

¹⁴⁸ Press Release, N.J. Dep't of Envtl Prot., *supra* note 6.

¹⁴⁹ Sapia, *supra* note 140.

¹⁵⁰ Press Release, N.J. Dep't of Envtl Prot., *supra* note 6.

¹⁵¹ *Id.*

Although a recent article states the course “will remain open to the public,”¹⁵² this remains a private golf course with annual membership fees of \$3,300.¹⁵³ This raises an obvious question as to how many taxpayers will benefit from this \$10.5 million state investment. As the conservation benefits of golf courses are dubious, the remaining Green Acres goal is recreation. The Project’s success in meeting the recreation goal becomes questionable when the recreation benefits are only available to a limited portion of the citizenry, as is the case here.

State and local officials highlighted the benefits of the recent acquisition. New Jersey Department of Environmental Protection Commissioner Lisa P. Jackson commented that with this golf course acquisition “[t]he public can continue to enjoy a popular recreational pastime and also admire the spectacular view of open space, knowing that this tract of land will not be further developed.”¹⁵⁴ Commissioner Jackson further “emphasiz[ed] the importance of *balancing open space preservation with active recreation*.”¹⁵⁵ Barbara L. Bascom, Township Administrator and Clerk of Upper Freehold, stated that “[n]umber one, we didn’t want development there,” indicating that the purchase was a successful means of thwarting development.¹⁵⁶ Jeff Tittel, state director of the Sierra Club,¹⁵⁷ quickly noted that “a golf course is developed land.”¹⁵⁸ The Sierra Club director raised the concern that this is a lot of money being allocated to “developed” land at a time when Green Acres funding is sparse,¹⁵⁹ noting “there’s a lot better places to spend [the money].”¹⁶⁰

Although courses generally seem to fit the program’s aims, acquiring developed land may become questionable as the funds are quickly running out. An analysis of the current action in New

¹⁵² *Id.*

¹⁵³ Cream Ridge Golf Club Home Page, <http://www.creamridgegolfclub.com> (last visited April 5, 2007).

¹⁵⁴ Press Release, N.J. Dep’t of Env’t Prot., *supra* note 6.

¹⁵⁵ *Id.* (emphasis added).

¹⁵⁶ Sapia, *supra* note 140.

¹⁵⁷ The Sierra Club is a national environmental advocacy group. See Sierra Club Home Page, <http://www.sierraclub.org> (last visited April 5, 2008).

¹⁵⁸ Sapia, *supra* note 140.

¹⁵⁹ See *supra* Part IV.

¹⁶⁰ Sapia, *supra* note 140.

Jersey is necessary to determine whether the funding of golf courses has been consistent with Green Acres' aims.

XIV. Current Action in New Jersey

Green Acres uses program funds to acquire golf courses, keeping the land from further development. The Green Acres program has been "bidding against developers . . . to keep fairways from becoming backyards."¹⁶¹ Green Acres money has been used by "14 counties and numerous municipalities" to acquire golf courses.¹⁶²

In the past two years New Jersey purchased four failing golf courses.¹⁶³ Commenting on the state's acquisition of failing golf courses, Green Acres Program Director John Flynn stated "[w]e have statewide support to preserve as much as we can of what's left."¹⁶⁴ The director has upset both the housing industry and environmentalists by choosing to fund golf courses.¹⁶⁵ He stated the action is "one of the few opportunities to acquire sizable tracts of space in some of the more developing parts of the state."¹⁶⁶

XV. Suitability of Golf Courses as Green Acres Projects

It is difficult to determine whether a golf course constitutes open space or recreation space for Green Acres purposes. In attempting to discern whether the links are indeed Green Acres, state court decisions, statutes, and public opinion help to inform a more comprehensive examination.

In other states, golf courses have been found suitable for park land, which seems to fit within the recreation aim. In California, an appellate court found golf courses to fit within their definitions of parks.¹⁶⁷ Tennessee land may be subject to taking for use as a municipal golf course, since it is a park purpose.¹⁶⁸

¹⁶¹ Hefler, *supra* note 92.

¹⁶² *Id.*

¹⁶³ Zgoda, *supra* note 96.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*; see also *supra* Parts VIII & IX.

¹⁶⁶ Hefler, *supra* note 92.

¹⁶⁷ *Save Mile Square Park Comm. v. County of Orange*, 92 Cal. App. 4th 1142, 1146 (Cal. Ct. App. 2001).

¹⁶⁸ *Johnson City v. Cloninger*, 213 Tenn. 71, 74 (1963).

At least one state has found that golf courses meet the requirements for open space under statute. An Arizona statute designating requirements for open space finds golf courses are an acceptable means of meeting the usual requirements. The statute states:

[a] municipality may designate land as *open space* without complying with the requirements of this subsection if the land was zoned as *open space* and used as a *golf* course pursuant to a zoning ordinance adopted pursuant to article 6.1 of this chapter before May 1, 2000 and the designation does not impose additional conditions, limitations or restrictions on the golf . . . ¹⁶⁹

In exempting golf courses, the state has seemed to acknowledge the courses may not meet the standard open space requirements. Yet, Arizona still found the courses to fit within the state's statutory open space aims.

A Michigan statute defines undeveloped land as "a natural state preserving natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition."¹⁷⁰ In particular, the statute explicitly excludes land used as a golf course, distinguishing it from other acceptable uses, such as "a recreational trail, picnic area, children's play area, greenway, or linear park."¹⁷¹ The statute does not require that land defined as undeveloped be open to the public.¹⁷² Interestingly, Michigan has plainly removed golf courses from its open space guidelines. Furthermore, Michigan has left other developed recreational space within the strictures, such as children's play areas.

The Alabama amendment, which parallels New Jersey's Green Acres Program, provides that:

No funds or assets of the Forever Wild Land Trust derived from any source shall be expended or used to construct or improve buildings, structures or facilities used for human lodging, feeding or entertainment, including, without limitation thereto, hotels and other lodging facilities, restaurants,

¹⁶⁹ ARIZ. REV. STAT. ANN.. § 9-461.06(N) (West, Westlaw through legislation effective April 22, 2008).

¹⁷⁰ MICH. COMP. LAWS § 125.3102(t) (2006).

¹⁷¹ *Id.*

¹⁷² *Id.*

convention centers and meeting halls, *golf courses*, dancing or meeting pavilions, tennis courts, recreational dams, exhibition halls, and similar facilities that have a principal purpose not related to the stewardship of properties¹⁷³

Interestingly, the Alabama provision, created by ballot initiative in 1990,¹⁷⁴ specifically prohibits golf course construction, designating courses among restaurants, convention halls, and other developed constructions.

Citizens have added to the public discourse in deciding whether to allow golf course construction in their towns. In recent years, there has been debate over how to develop land in New Milford, CT. The mayor at the time supported the construction of a golf course, stating that “a golf course would not only cut down on the number of houses, but it would also fulfill some of our recreational needs and at the same time preserve some open space. Everyone keeps advocating for open space, but *golf courses are open space*.”¹⁷⁵ Some residents disagreed with the mayor, finding golf courses do not constitute open space.¹⁷⁶ One resident commented that course developers will cut down trees “and wipe out a huge amount of flora and fauna, throw in some pesticides and fertilizers . . . [calling it] open-space preservation.”¹⁷⁷ The town was torn on the issue of whether developing a golf course was a suitable means of preserving open space within the town.¹⁷⁸

State legislators have found golf courses do not meet the requirements for open space tax breaks. In 2005, Connecticut lawmakers voted against a bill that would have given certain golf courses open space tax breaks.¹⁷⁹ In 2006, a new bill was proposed to give golf courses local tax breaks citing open space preservation

¹⁷³ ALA. CONST. amend. 543, §3(e) (emphasis added).

¹⁷⁴ HELLAND, *supra* note 46, at 2.

¹⁷⁵ Elizabeth Maker, *A Town Debates Golf vs. Open Space*, N.Y. TIMES, Sept. 27, 1998, § 14CN, at 12 (emphasis added).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Matthew Galligan, *Don't Give Golf Courses Open Space Tax Breaks*, HARTFORD COURANT, Apr. 3, 2006, available at <http://www.ccm-ct.org/advocacy/2005-2006/040306.html>.

and the financial stresses on golf courses as the reasons.¹⁸⁰ One town manager urged his citizenry to fight the proposed bill.¹⁸¹

Some conservationists speak to the problem of golf courses being considered open space. David Friedman, the director of Ocean County's Soil Conservation Service commented on the problems of developing land:

But *any kind of development—not just paved areas, but also lawns, golf courses, athletic fields, and the like*—compacts this soil so that water cannot percolate through it[, w]e're seeing greatly increased flows in stormwater basins and saltwater intrusion in wells. At one time, our porous soils were a natural flood control.¹⁸²

In the environmental community and beyond, it appears clear that a golf course is considered developed land.

Golf courses are developed land¹⁸³ and they cater to a limited constituency, which ignores the statutory considerations of Green Acres' funding allocations.¹⁸⁴ Golf courses do, however, provide recreational space and aesthetic benefits to the community.¹⁸⁵

XVI. Final Thoughts

The New Jersey Green Acres Program has been a success and, as a forerunner in conservation legislation, it is an example to other states¹⁸⁶ in the battle to save open space. Despite all of its success, the program is running out of funding and must be evaluated to determine how to best sustain its goals in the future. The importance of Green Acres' goals to preserve open space for recreation and conservation are clear.

In turning to similar legislation in other states, a national trend toward preservation is developing with some states creating

¹⁸⁰ *Id.*

¹⁸¹ Author Matthew Galligan is the town manager of South Windsor, Connecticut. *Id.*

¹⁸² THE TRUST FOR PUBLIC LAND, PROTECTING A COASTAL ECOSYSTEM, http://www.tpl.org/tier3_cdl.cfm?content_item_id=918&folder_id=745 (last visited May 4, 2008) (emphasis added).

¹⁸³ See N.J. STAT. ANN. § 13:8A-5(b) (West 2003).

¹⁸⁴ See N.J. STAT. ANN. § 13:8A-5(c); see also *supra* Part VII.

¹⁸⁵ See *supra* Part V.

¹⁸⁶ It was analyzed as a model program for Minnesota research. See HELLAND, *supra* note 46.

inventive programs. In particular, the State of Colorado's method of dividing its funds between different goals appears to be a logical component for an open space program, ensuring that the funding reaches the legislation's multiple aims.

New Jersey's current divisions between non-profits and state and local governments provide a balance enabling the funding of small and large projects. The funds earmarked for local projects enable communities to preserve space that is important to their local culture and needs. State funding helps facilitate the preservation effort on a larger scale. The problem with local funding in New Jersey is, with so many municipalities vying for funding, many worthwhile projects will be overlooked. New Jersey might consider removing the state and local distinctions in favor of regional classifications, ensuring that the funding is dispersed to projects around the state. If the State eliminated the non-profit distinction it may force social organizations to work in tandem with local governments. Alternatively, it may force hardworking non-profits out of the funding pool altogether. In all, New Jersey would best be served by ensuring the projects are dispersed statewide, rather than focusing on state versus local project distinctions.

New Jersey's program would likely benefit from compartmentalizing its preservation efforts by program aim. Allocating Green Acres funding between conservation and recreation efforts would ensure the Program is meeting its dual open space aims. There is some clear overlap between the two categories, so perhaps there should be a small percentage for pure conservation projects (to ensure these efforts are not forgotten). Otherwise, the fund could be divided three ways into funds for recreation, conservation, and hybrid projects. The division would ensure that one aim of the program would not be sacrificed to fund another.

In examining the Green Acres statute, the program prioritizes truly natural lands¹⁸⁷ as well as land serving multiple purposes. This ensures the land is being used in a cost effective way. Undeveloped

¹⁸⁷ In allocating funds, the statute considerations state, "in so far as practicable, limit acquisition to predominantly open and natural land to minimize the cost of acquisition and the subsequent expense necessary to render land suitable for recreation and conservation purposes." N.J. STAT. § 13:8A-5 (emphasis added).

land is less expensive. In addition, land that serves multiple purposes reaches a broader class of state citizens.¹⁸⁸

In examining the use of Green Acres funds to acquire golf courses, there is a divide between interest groups as to whether this is a suitable appropriation. Environmentalists highlight the developed nature of golf courses, as well as the effects that their maintenance has on the surrounding environment. Builders profess that golf courses are developed land and an inappropriate use of Green Acres funds. The golfers and USGA defend their courses, arguing that the courses' ecosystems benefit local communities.

The conflicting groups reached common ground on some collaborative projects. In recognizing the environmental considerations raised by golf space, the USGA joined forces with environmental organizations to make the sport and its playing fields as eco-friendly as possible. Course managers may seek certifications through the Audubon Group, which acknowledges the course has met strict environmental standards in a number of areas. By choosing organic maintenance methods and working with environmental groups to make smart choices, golf space may become less environmentally hazardous.

Understandably, golf courses are a practical means of fulfilling recreation space needs, fitting well within the meaning of one of Green Acres' twin aims. The real questionable use is in relation to golf courses as a means of conserving open space. However, so long as one aim is fulfilled it seems the basic statutory requirement has been met. The analysis, however, should not end with the fulfillment of one Green Acres goal.

Although Green Acres is intended to provide for recreational purposes, one must recognize this funding is the state's primary means of preserving open space and land within New Jersey. Golf courses are not only developed land, they are also expensive, so their acquisition at a time of scarce funding may not be the best investment for the state.

There are some potential solutions to somewhat appease environmentalists and golfers alike. The use of organic

¹⁸⁸ The considerations also favor projects that have "multiple recreation and conservation purposes." *Id.*

maintenance methods would provide more “green” conscious courses. In addition, state-funded courses could be required to obtain Audubon certification, demonstrating that the course meets high standards for conservation and other environmental concerns.

In addition to environmental concerns, golf courses provide a single potential use that creates an exclusivity problem. The benefits of Green Acres funding should reach a broad base of citizens. Golf courses benefit a limited group of people directly, namely golfers, yet they also add aesthetic appeal to a community and provide recreational space. If properly balanced with other, more pure conservation efforts, the use of open space funding for golf courses appears to fit within the aims of Green Acres.